

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

WINSTON WESLEY NOLES,  
Plaintiff,

v.

NICK DIAL, KEITH SHORT,  
Defendants.

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Cause No. 3:20-cv-03677-N-BK

**DEFENDANTS' FIRST MOTION FOR PROTECTIVE ORDER (and Motion to Quash)  
REPLY TO RESPONSE**

Defendants file herewith their Reply to Plaintiff's Response to Defendant's First Motion for Protective Order and for same would state unto this Honorable Court the following:

1. On p. 1 of his response, Plaintiff presents a Res Judicata argument. This ground is not presented in Defendant's Motions pending before the Court.

2. On p. 2 of his response, Plaintiff presents argument regarding Defendant's prior motion to dismiss which is no longer before the Court.

3. Plaintiff argues<sup>1</sup> that the Magistrate's Finding held that the Original Complaint was sufficient to overcome the qualified immunity defense of Defendants.<sup>2</sup> The Finding of the Magistrate was directed to the pleading contained in Plaintiff's *Original* Complaint. The currently pending Motion to Dismiss is directed toward Plaintiff's *First Amended* Complaint – *not* the Original.<sup>3</sup> An amended complaint replaces the original complaint<sup>4</sup> and, therefore, presents a new pleading to which Defendants respond.

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<sup>1</sup> Docket #47, p. 2.

<sup>2</sup> *Id.*, #26, pp. 8-10.

<sup>3</sup> *See*, Defendant's Motion to Dismiss, *Id.*, #39, p. 1.

<sup>4</sup> Black's Law Dictionary, 11<sup>th</sup> Ed. (1995), p. 355.

4. Regardless of the foregoing, Plaintiff's claims herein are barred by limitations. This defense was raised in Defendant's pending Motion to Dismiss<sup>5</sup> and its application hereto has been recognized by this Honorable Court.<sup>6</sup> Plaintiff has since admitted that the underlying arrest occurred on Dec. 16<sup>th</sup>, 2018<sup>7</sup> -- *before* and therefore outside of the limitations period per the Magistrate's Finding.<sup>8</sup>

5. Defendants wish to correct the record on legal authority underlying their Motion for Protective Order. In the *Carswell v. Camp* case, the petition for rehearing was denied and the opinion was re-issued on Nov. 30<sup>th</sup>, 2022, with a new cite – *Carswell v. Camp*, \_\_\_ F.4<sup>th</sup> \_\_\_, 2022 WL 17335977 (5<sup>th</sup> Cir. 2022). The substance of the opinion remains unchanged and the substance of Defendants' cites thereto also remain.

6. Defendants respectfully submit that the argument that this Court had "definitively"<sup>9</sup> rejected the qualified immunity of Defendants to the claims asserted in the Amended Complaint is simply not supported by the Orders of this Honorable Court. Defendants, pursuant to the principles of the *Dondi* opinion, agreed on *scheduling* of depositions. Defendants contemplate that agreements on such procedural matters will continue in the future, as needed.

Accordingly, Defendants respectfully request the Court for the relief sought in their Motion for Protective Order and for such other relief, both general and special, to which Defendants may be justly entitled.

Respectfully submitted,

By: /s/ Joe C. Tooley

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<sup>5</sup> Docket # 39, p.1.

<sup>6</sup> *Id.*, #26, p. 5.

<sup>7</sup> Docket # 38, p. 3, Plaintiff's First Amended Complaint.

<sup>8</sup> *Id.*, #26, p. 5.

<sup>9</sup> *Id.*, #47, p. 4.

State Bar No. 2012970  
510 Turtle Cove, Suite 112  
Rockwall, Texas 75087  
(972) 722-1058  
(972) 722-1070 (Facsimile)  
[Joe@TooleyLaw.com](mailto:Joe@TooleyLaw.com)

ATTORNEY FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure, as modified by this Court's ECF Orders, on this 06<sup>th</sup> day of December, 2022.

**/s/ Joe C. Tooley**